HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 107 (SS) OF 2004

Chintamani Thapliyal,
S/o late Sri Suryamani Thapliyal,
R/o Village-Jakhwal Gaon,
Post Office-Madannegi,
District-Tehri Garhwal .....Petitioner.

Versus

1. State of Uttaranchal through Chief Forest Conservator, Dehradun.
2. Divisional Forest Officer, Tehri Garhwal.
3. Forest Conservator, Muni-ki-Reti, District-Tehri Garhwal.
4. Prabhagiya Van Adhikari Tehri, New Tehri.
5. State of U.P., through chief forest conservator, Lucknow. .....Respondents.

Dated: 08.03.2006

Hon'ble Rajesh Tandon, J.

Heard Sri N.S. Pundir, Advocate for the petitioner, Standing Counsel for the State of Uttaranchal and Stnading Counsel for the State of U.P.

2. By the present writ petition, the petitioner has prayed for a writ of Mandamus directing and commanding the respondents to issue the appointment letter to the petitioner of Class III post or Class IV post under Dying in Harness. Further prayer has been made for a writ of mandamus commanding

the respondents to decide the representation of the petitioner or the representation of his mother dated 14.10.2003.

3. Briefly stated, the father of the petitioner was posted as Forest Guard in Forest Department as a regular employee, he died on 22.10.1980 in harness leaving behind the petitioner and petitioner's mother as his sole heirs. At the time of death of his father, the petitioner was 3 years of age.

4. The mother of the petitioner never claimed any appointment on compassionate ground for herself, but has claimed compassionate appointment for her son only.

5. On 22.02.1994, the Forest Conservator wrote a letter to the petitioner's mother stating that according to the School Certificate, the date of birth of her son (petitioner) is 02.07.1977 and till date, he has not completed 18 years of age and stated that when her son will complete 18 years of age, then the case of her son shall be considered for the appointment under Dying in Harness Rules. Relevant portion of the letter is quoted below:

> **vkidk lfpr djuk gS fd xzke lHkk tdokyxkWo dh i:/kku ,oa i:/kkukpk;r jk0m0ek0 fo0 enu uxj fVgjh x<oky }kjk fuxr tUefrfFk izek.k i= ds vuqlkj vkidk iq= dh tUefrfFk 12-7-77 gSA lksk;kstu gsrq U;wure vk;q lhek 18 o"kZ gSA vr% 18 o"kZ dh vk;q iwjh djus ls igys vkidk iq= dks lksk;kftr fd;k tkuk lEHko ugha gSA
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6. Complying the order dated 22.02.1994, after completing the age of 18 years, petitioner moved a representation on 05.07.1995 before the respondent no. 3 requesting to give appointment under Dying in Harness Rules and in this respect, he enclosed various documents such as High School Certificate, Class 11th Marksheet and a letter of his mother.

7. On 16.09.1995, respondent no. 4 wrote a letter to Chief Forest Conservator U.P. Lucknow stating therein that the petitioner has visited the office of respondents a number of times for getting appointment under Dying in Harness Rules and sought necessary guidelines and instructions in this regard.

8. The respondent no. 3 on 10.11.1995 wrote a letter to the respondent no. 5 requesting him to give benefit of compassionate appointment under Dying in Harness rules, even though the period of five years has already expired and also sought some guidelines and instructions regarding this aspect.

9. The petitioner passed the Intermediate Examination in the year, 1997 and therefore, according to him, he is entitled to be appointed on Class III post on compassionate ground under Dying in Harness Rules.

10. Last representation was submitted by the mother of the petitioner on behalf of the petitioner on 14.10.2003 requesting the Prabhagiya Van Adhikari Tehri To give compassionate appointment on Class III or Class IV post.

11. A counter affidavit has been filed by the State, where in paragraph 6, it has been stated as under:

> *"6. That in reply to the contents of para 5 to 13 of the writ petition, it is submitted that the petitioner for his appointment furnished the relevant record of his qualification and age, it was found that his date of birth is 12-7-77 and petitioner's age on 22-2-1994, i.e. the date of application of the petitioner, the petitioner did not completed 18 years, hence he could not be given appointment. The petitioner, thereafter on 5-7-1995 applied for the post of forest Guard under Dying in Harness Rules, but as on such date more than 5 years has already been expired, which was mandate period for moving application within 5 years in pursuance of Government Order dated 24-4-1994, his case was referred for the Government for considering the case in the said matter. Copy of said letter dated 30-12-1995 is being filed herewith and is marked as ANNEXURE NO. C.A.1 to this counter affidavit. But, the Chief conservator of Forest, Bhagirathi Circle, UP, Muni Ki Reti has informed that the Government has already provided relaxation for further five years on sympathetic ground, but here in the present case, more than 5 years has been expired, hence no further consideration can be given into the matter. Copy of letter dated 20-3-96 is being filed herewith and is marked as ANNEXURE NO. C.A.2 to this counter affidavit and under such circumstances, the case of the*

petitioner could not be considered for appointment under Dying in Harness Rules and the petitioner was also informed by Divisional Forest Officer, Tehri Division, Tehri vide letter dated 11-12-2000."

12. The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

13. Since the petitioner has not applied for the compassionate appointment within time, no relief can be granted to the petitioner. However, if the post is available, he may by considered for the same and the representation filed by the petitioner may be disposed of.

14. Subject to above, writ petition disposed of. No order as to costs.

(Rajesh Tandon, J.)

08-03-2006
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